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**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSES OF)
DAVID MAX ANDERSON) **STIPULATION AND ORDER**
TO PRACTICE AS A DENTIST)
AND TO ADMINISTER AND PRESCRIBE)
CONTROLLED SUBSTANCES) **CASE NO DOPL 2011- 364**
IN THE STATE OF UTAH)

DAVID MAX ANDERSON ("Respondent") and the **DIVISION OF
OCCUPATIONAL AND PROFESSIONAL LICENSING** of the Department of Commerce of
the State of Utah ("Division") stipulate and agree as follows

1. Respondent admits the jurisdiction of the Division over Respondent and over the
subject matter of this action.
- 2 Respondent acknowledges that Respondent enters into this Stipulation knowingly and
voluntarily

3 Respondent understands that Respondent has the right to be represented by counsel in this matter and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives Respondent's right to counsel in this matter

4 Respondent understands that Respondent is entitled to a hearing before the State of Utah's Dentist and Dental Hygienist Licensing Board ("Board"), or other Division Presiding Officer, at which time Respondent may present evidence on Respondent's own behalf, call witnesses, and confront adverse witnesses Respondent understands that by signing this document Respondent hereby waives the right to a hearing, the right to present evidence on Respondent's own behalf, the right to call witnesses, the right to confront adverse witnesses, and any other rights to which Respondent may be entitled in connection with said hearing Respondent understands that by signing this document Respondent hereby knowingly and intelligently waives the right to all administrative and judicial review as set forth in Utah Code Ann §§ 63G-4-301 through 63G-4-405, and Utah Administrative Code R151-46b-12 through R151-46b-15. Respondent and the Division hereby express their intent that this matter be resolved expeditiously through stipulation as contemplated in Utah Code Ann § 63G-4-102(4)

5 Respondent waives the right to the issuance of a Petition and a Notice of Agency Action in this matter

6 Respondent understands that this Stipulation and Order, if adopted by the Director of the Division, will be classified as a public document The Division may release this Stipulation and Order, and will release other information about this disciplinary action against Respondent's licenses, to other persons and entities

7 Respondent neither admits nor denies the following, but agrees that the Division shall make the following findings of fact, which the parties agree shall not be used as evidence in any criminal or other civil proceeding

- a. On or about February 2, 1996 Respondent was first licensed to practice as a dentist and to administer and prescribe controlled substances in the State of Utah. Respondent is also licensed as a physician in the State of Utah without an associated controlled substance license
- b. Beginning in October 2010 and continuing until March 2011, Respondent, on multiple occasions, abused the controlled substances Fentanyl, a Schedule II controlled substance, and Demerol, a Schedule II controlled substance
- c. On or about March 14, 2011 Respondent committed a number of moving traffic violations while driving his vehicle to Respondent's place of business in Sandy, Utah. Respondent used Fentanyl before driving to what he believed was the post office and back to his office
- d. A Sandy City police officer contacted Respondent shortly thereafter at Respondent's place of business where Respondent denied having committed any traffic offenses. Respondent told the police officer that he may have been distracted while talking on his cell phone. The Sandy City police officer observed that Respondent was jittery, had trouble sitting still, had shaking hands, and spoke very quickly. The Sandy City police officer was of the opinion that Respondent was under the influence of some sort of controlled substance. The Sandy City police officer told Respondent not to drive again until he could safely operate a vehicle
- e. About three hours after the incident described above, one of Respondent's employees, hereinafter referred to as Jane Doe, heard a gurgling noise coming from Respondent's office. Jane Doe found Respondent lying on his office floor after falling out of his chair. Jane Doe observed that Respondent had blood on his arm. Jane Doe called for emergency services, who thereafter arrived and provided emergency medical services to Respondent. The Sandy City police officer who had spoken with Respondent earlier in the day arrived at Respondent's office and observed a stream of blood coming out of Respondent's arm. Respondent was then transported to a hospital. Respondent had attempted to inject himself with Fentanyl, but mistakenly injected himself with Versed (Midazolam)

- f The Sandy City police officer observed a number of syringes and bottles filled with fluid labeled "Fentanyl" and "Midazolam" lying about Respondent's office. The Sandy City police officer also noticed a safe lying open on the floor. The Sandy City police officer also found twenty-one empty bottles of Fentanyl in a cupboard above Respondent's desk.
- g Respondent's office staff knew that Respondent had a Fentanyl habit for a number of months. March 14, 2011 was Respondent's day off, but Respondent had come into the office to perform an emergency procedure on a patient, and to prep medication for procedures the next day.
- h Respondent did not possess a valid prescription for Fentanyl or Midazolam, nor were the Fentanyl or Midazolam administered to Respondent by a prescribing practitioner.
- i Respondent states that he did not harm any patient during the incident described above.
- j Respondent surrendered his DEA certificate of registration on April 26, 2011.
- k Respondent has engaged in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct might reasonably be considered to impair Respondent's ability to safely practice as a dentist and to administer and prescribe controlled substances.

8 Respondent,

that the findings of fact made by the Division above constitute unprofessional conduct as defined in Utah Code Ann. § 58-1-501(2)(a), (b), (e), and (h), and Principle 2(d) of the Code of Ethics of the American Dental Association, and unlawful conduct as defined in Utah Code Ann. § 58-37-8(2)(a)(i) and Utah Administrative Code R156-37-502(1)(a) and (2). Respondent agrees that by engaging in such conduct the Division is justified in taking disciplinary action against Respondent's license pursuant to Utah Code Ann. § 58-1-401(2)(a) and (b). Respondent agrees that an Order, which constitutes disciplinary action against Respondent's license by the Division

pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann § 58-1-401(2), may be issued in this matter providing for the following action against Respondent's license

- (1) Respondent's license to practice as a dentist shall be revoked and the revocation immediately stayed. Respondent's license shall be reduced to an Anesthesia Class I Permit. Respondent's license to practice as a dentist in the State of Utah shall be suspended on November 9, 2011 when Respondent enters the Pinegrove facility in Hattiesburg, Mississippi, and remain suspended until Respondent successfully completes the following: (1) Respondent undergoes the evaluations at the Pinegrove facility as set forth in paragraph 8(3)(b)(i), and the clinical director submits the evaluation reports with any recommendations for treatment and a fitness for duty letter to the Division and Board stating that specifically that it is safe for Respondent to practice as a dentist, and (2) the Division and Board have an opportunity to review the evaluation reports and fitness for duty letter and find that Respondent may safely practice as a dentist. The suspension of the Respondent's license is being delayed until November 9, 2011 to permit Respondent to ensure the care of currently scheduled patients in an orderly manner.
- (2) Respondent hereby surrenders his license to administer and prescribe controlled substances in the State of Utah. Respondent shall not submit an application for licensure to administer and prescribe controlled substances in the State of Utah until: (1) the DEA indicates a willingness to the Division to approve any application by Respondent for a DEA certificate of registration, (2) the clinical director at the Pinegrove facility submits a letter to the Division and Board stating that it is safe for Respondent to administer and prescribe controlled substances, (3) the Division and Board have an opportunity to review the fitness for duty letter and determine that Respondent may safely administer and prescribe controlled substances in the State of Utah, and (4) Respondent successfully completes the PACE prescribing course described below. If Respondent submits an application for licensure to administer and prescribe controlled substances in the future, and the Division elects to approve the application, the Division may issue the license subject to terms and conditions.
- (3) Respondent's license to practice as a dentist shall be subject to a term of probation for a period of five years. The period of probation shall commence on the date the Division Director signs an Amended Order lifting the suspension of the license. During the period of probation, Respondent's license shall be subject to all of the following terms and conditions. Respondent may submit a request to the Division and Board

asking that the period of probation be terminated before five years has elapsed. The Division does not guarantee that any such request will be approved. If the Division and Board later deem any of the conditions unnecessary such deletions may be made by an amended order issued unilaterally by the Division and Board. Respondent's license shall not be considered a "restricted" license as defined in Utah Administrative Code R156-1-102(25).

- a. Respondent shall meet with the Board at the next scheduled Board meeting after his suspension is lifted. Respondent shall meet with a Division staff person prior to Respondent's first meeting with the Board to review this agreement. For the remainder of the duration of probation, Respondent shall meet with the Board or with the Division, as directed by the Division and Board, annually or at such other greater or lesser frequency as the Division and Board may direct.
- b. Respondent shall submit to the following course of treatment as part of Respondent's rehabilitation and at Respondent's own expense:
 1. Respondent shall successfully complete a comprehensive evaluation, which includes psychological, neuropsychological, and chemical dependency evaluations at the Pinegrove facility in Hattiesburg, Mississippi within ninety (90) days of the effective date of this Stipulation and Order. Respondent shall contact the facility for an initial appointment within 10 days of the effective date of this Stipulation and Order. Respondent shall schedule the initial appointment to be held within 45 days of the effective date of this Stipulation and Order. Respondent shall attend all appointments and follow-up appointments in a timely manner. Respondent shall cooperate fully with the evaluators to ensure a fair and complete evaluation. Respondent shall notify the Division and Board immediately after successfully completing the evaluations and inform the Division and Board that Respondent has successfully completed the evaluations. Respondent shall sign a release of information agreement whereby the Division and Board may communicate freely and transmit confidential information to each other in order to facilitate Respondent's treatment and continuing practice. Respondent agrees to cause the evaluation(s) reports to be sent to the Division and

Board within 90 days of the effective date of this Order. The Division or Board may require that Respondent successfully complete a follow-up evaluation at any time.

- ii. If Respondent fails to submit the evaluation(s) to the Division and Board within the time stated above, the Division and Board may take any action necessary pursuant to the Utah Administrative Procedures Act, Utah Code Annotated § 63-46b.
 - iii. Respondent shall successfully complete any treatment recommendations as outlined in the evaluations.
 - iv. In the interest of public safety, the Division or Board may impose additional requirements above and beyond those recommended by the evaluators in the evaluations set forth above. Respondent agrees to comply with these additional requirements.
- c. Respondent shall successfully complete the prescribing course at the PACE program at the University of San Diego School of Medicine within one year of the effective date of this Stipulation and Order. Respondent shall submit an essay to the Division describing what Respondent learned in the PACE course, and how it will affect the way Respondent practices, within 60 days of completion of the course.
- d. Unless otherwise approved by the Division and Board, Respondent shall, except as provided otherwise herein, receive prescriptions from only one prescribing practitioner, and Respondent shall fill prescriptions at only one pharmacy. Respondent shall not obtain the same or equivalent prescription drug or controlled substance from more than one practitioner. All prescribing practitioners must be informed of any and all of Respondent's addiction/abuse problems. Respondent shall not undertake, under any circumstance, to obtain prescription drugs in quantities or types that are not legitimately required. Respondent shall submit the names of the prescribing practitioner and pharmacy to the Division and Board for approval. Respondent shall provide the Division and Board with a copy of all Respondent's prescriptions for prescription drugs, controlled substances, or any other mood altering substance, within forty-eight (48) hours after the prescription has been written.

- e Prescriptions from an emergency practitioner or referral practitioner must be submitted to the Division and Board within forty-eight (48) hours of being issued. Respondent shall report to the Division and Board within forty-eight (48) hours any and all medications and controlled substances administered or dispensed to Respondent by any other individual.
- f Respondent shall report to the Division and Board within forty-eight (48) hours any and all medications or controlled substances ingested by Respondent from any source.
- g Respondent shall provide to the primary prescribing practitioner a copy of this Stipulation and Order and cause the practitioner to *acknowledge to the Division and Board in writing that a copy of this Stipulation and Order has been provided to the primary prescribing practitioner*.
- h Although the use and possession of alcohol is generally legal for persons age 21 and older, Respondent agrees to abstain from the personal use or possession of alcohol in any form. Respondent *agrees to abstain from the personal use or possession of controlled substances and prescription drugs, unless such controlled substance or prescription drug is lawfully prescribed to Respondent for a current bona fide illness or condition by a licensed practitioner and taken by Respondent in accordance with that practitioner's instructions*. Respondent shall abstain from the use of any and all other mood altering substances or use of mood altering substances for any other purpose than the purpose for which the substance is intended.
- i Respondent shall provide samples (urine, blood, saliva, hair, or any other type of sample requested) for drug and alcohol analysis upon the request of the Division or Board, to be conducted by any company with which the Division has contracted to conduct drug testing. The designated company may also request such samples and Respondent shall comply with such requests. The Division or Board shall determine when and where Respondent is to submit for testing. Respondent shall call in every day to a designated telephone number to determine whether Respondent is required to provide a sample for drug and alcohol analysis. Respondent shall pay for the cost of drug testing and shall accurately complete and sign any and all release forms requested by the Division or Board.

or the drug testing company with respect to drug testing, including but not limited to, forms authorizing the company to send the drug test results to the Division and Board. Any report from a drug testing company that indicates that Respondent failed to provide a sample for drug and alcohol analysis as directed will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions. Any drug test result or pattern of results that indicates that the sample provided by Respondent for drug and alcohol analysis is diluted to an extent that it cannot be analyzed, will be considered a positive drug test result for Respondent and will subject Respondent to additional sanctions.

- j. Failure of Respondent to pay the costs associated with this Stipulation and Order constitutes a violation of the Stipulation and Order.
- k. The Division may take appropriate action to impose sanctions if (i) Respondent tests positive for a prescription drug, a controlled substance, or any mood altering substance which cannot be accounted for by an administration or prescription by a lawful practitioner for a current medical condition; or (ii) Respondent violates any federal, state or local law relating to Respondent's practice, the Controlled Substance Act, or a term or condition of this Stipulation and Order. Sanctions may include revocation or suspension of Respondent's license, or other appropriate sanction, in the manner provided by law.
- l. All reports and documentation required in this Stipulation and Order shall be submitted to the Division and Board on a monthly basis for the first six months of probation. If Respondent is in compliance with all terms and conditions of the Order at the end of that time, all reports and documentation shall be submitted on a quarterly basis, or at such frequency as determined by the Division and Board, for the remainder of probation. If Respondent is not in compliance with all terms and conditions of the Order by the end of the first six (6) months of probation, all reports and documentation shall be submitted on a monthly basis until Respondent is in compliance with the Order, after which all reports shall be submitted on a quarterly basis or at such frequency as determined by the Division or Board.
- m. Respondent shall participate in all therapy and aftercare that the evaluation(s) may require. Respondent shall authorize all

approved treatment programs or therapists from whom Respondent has received or will receive treatment to discuss Respondent's diagnosis, treatment, and prognosis with the Division and Board. The program or therapist must also be directed to submit evaluations to the Division and Board that address Respondent's progress in treatment and Respondent's prognosis at the frequency described in subparagraph (l) above. Respondent may be subject to re-evaluation upon notice and opportunity to be heard.

- n If so recommended by an evaluator, Respondent shall participate in a professional support group to address Respondent's use of mood altering substance and controlled substances and shall submit documentation that reflects Respondent's continuing and regular *attendance at such support group meetings*. Respondent shall submit such documentation to the Division and Board at the frequency described in subparagraph (l) above. Regular attendance for the purpose of this paragraph shall be at least twice a month.
- o If so recommended by an evaluator, Respondent shall attend a 12-step program, have a sponsor, work the 12-step program and submit reports at the frequency described in subparagraph (l) above to the Division and Board documenting Respondent's participation. The frequency of participation shall be approved by the Division and Board. Unless otherwise directed, Respondent shall attend at least two times per month.
- p Respondent shall notify any employer or practice associate of Respondent's restricted status and the terms of this Stipulation and Order. Respondent shall further cause Respondent's employer and practice associates to notify the Division and Board in writing that the employer has received a copy of this Stipulation and Order. Respondent shall cause his employer to submit employer reports to the Division and Board at a frequency described in subparagraph (l) above. If Respondent is self-employed, Respondent shall submit employer reports stating that he is self-employed.
- q Respondent shall issue prescriptions only on sequentially numbered triplicate scripts. One copy of each prescription shall remain in the patient chart and one copy of each prescription shall be sent by Respondent to the Division and Board within one month of issuance. *If Respondent utilizes electronic medical records the Division will provide directions for reporting.*

- r Respondent shall record all prescriptions medication that Respondent administers directly to patients or that are administered to patients during a procedure involving Respondent in a log. The log shall be submitted to the Division and Board on a monthly basis or at frequency determined by the Division and Board.
- s Respondent shall practice only under the supervision of a Division and Board pre-approved dentist supervisor, who is licensed and in *good standing with the Division, during the term of Respondent's probation*. Respondent's supervisor shall submit reports to the Division and Board on a form pre-approved by the Division and Board at the frequency described in subparagraph (l) above. Any changes in supervision may be made only with the consent of the Division and Board. Respondent shall deliver a copy of this Stipulation and Order to Respondent's supervisor (within ten days of the establishment of the supervisory relationship) and cause Respondent's supervisor to notify the Division and Board in writing that a copy has been received, that the supervisor is willing to accept the responsibilities and obligations of acting as Respondent's supervisor, and submit a copy of the supervisor's curriculum vitae to the Division and Board. The receipt of an unfavorable report may be considered to be a violation of probation.
- t Respondent shall meet weekly, or at a frequency determined by the Division and Board, with Respondent's supervisor. Supervision goals shall include concurrent management, oversight of clinical services, sobriety, and professional relationships and practices. The supervisor shall review 20% of Respondent's current patient files. The supervisor shall review Respondent's prescription administration log. The supervisor shall choose which files shall be reviewed. The supervisor shall oversee clinical interventions. The supervisor shall address issues pertaining to sobriety on the job and ethical documentation and any other issues the supervisor determines are pertinent to professional and ethical practice. Respondent shall cause Respondent's supervisor to meet with the Division and Board, either in person or telephonically, at Respondent's first meeting with the Board, to discuss oversight issues the responsibilities of a supervisor.
- u. If Respondent is self-employed in private practice, Respondent shall hire a supervisor, pre-approved by the Board and Division.

- v In the event Respondent does not practice for a period of sixty (60) days or longer, Respondent shall notify the Division and Board in writing of the date Respondent ceased practicing. The period of time in which Respondent does not practice shall not be counted toward the time period of this Stipulation and Order. It shall be within the discretion of the Division and Board to modify this requirement if Respondent satisfactorily explains to the Division and Board that compliance in Respondent's case was impractical or unduly burdensome. Respondent must work at least 16 hours per week and no more than 48 hours per week to be considered "practicing" in Respondent's profession.
- w Respondent shall notify the Division and Board in writing within one (1) week of any change of employer, employment status, or practice status. This notification is required regardless of whether Respondent is employed in Respondent's profession.
- x If Respondent leaves the State of Utah for a period longer than sixty (60) days, Respondent shall notify the Division and Board in writing of the dates of Respondent's departure and return. The licensing authorities of the jurisdiction to which Respondent moves shall be notified by Respondent in writing of the provisions of this Stipulation and Order. Periods of residency or practice outside the State of Utah may apply to the reduction of the period this Stipulation and Order is in effect, if the new state of residency places equal or greater conditions upon the Respondent as those contained in this Stipulation and Order.
- y. If Respondent is arrested or charged with a criminal offense by any law enforcement agency, in any jurisdiction, inside or outside the State of Utah, for any reason, or should Respondent be admitted as a patient to any institution in this state or elsewhere for treatment regarding the abuse of or dependence on any chemical substance, or for treatment for any emotional or psychological disorder, Respondent agrees to cause the Division and Board to be notified immediately. If Respondent at any time during the period of this agreement is convicted of a criminal offense of any kind, or enters a plea in abeyance to a criminal offense of any kind, including a pending criminal charge, the Division may take appropriate action against Respondent, including imposing appropriate sanctions, after notice and opportunity for hearing. Such sanctions may include revocation or suspension of Respondent's license, or other appropriate sanctions.

- z Respondent shall have no access to controlled substances until the Division and Board so approve
- aa Respondent shall maintain current Utah licenses at all times during the period of this agreement
- bb Respondent shall immediately notify the Division and Board in writing of any change in Respondent's residential or business address
- cc Respondent shall submit reports on the date they are due and shall appear at scheduled meetings with the Division and Board promptly Failure to do so shall be considered a violation of this Stipulation and Order
- dd Respondent shall not prescribe any medication to any family member, friend, or co-worker
- ee Respondent shall successfully complete the "PRIME" ethics course within one year of the effective date of this Stipulation and Order and provide a certificate of completion to the Division and Board
- ff Respondent shall submit an essay to the Division and Board describing the effect of Respondent's conduct on himself, Respondent's co-worker, his patients, and on his profession Respondent shall submit the essay within one year of the effective date of this Stipulation and Order

9 Upon approval by the Director of the Division the Stipulation and Order shall be the final compromise and settlement of this non-criminal administrative matter Respondent acknowledges that the Director is not required to accept the terms of this Stipulation and Order and that if the Director does not do so, this Stipulation and the representations contained therein shall be null and void, except that the Division and the Respondent waive any claim of bias or prejudgment they might otherwise have with regard to the Director by virtue of his having reviewed this Stipulation, and this waiver shall survive such nullification

10 Respondent shall abide by and comply with all applicable federal and state laws, regulations, rules and orders related to the Respondent's licensed practice

11 Respondent agrees not to take any action or make any public statement that creates, or tends to create, the impression that any of the matters set forth in the Stipulation and Order are without a factual basis. A public statement includes statements to one or more Board members during a meeting of the Board. Any such action or statement shall be considered a violation of this Stipulation and Order.

12 If the Division files a Petition against Respondent alleging violation of this Stipulation and Order by Respondent, the period of probation shall be tolled until the allegations contained in the Petition are fully resolved.

13 This document constitutes the entire agreement between the parties and supersedes and cancels any and all prior negotiations, representations, understandings or agreements between the parties regarding the subject of this Stipulation and Order. There are no verbal agreements that modify, interpret, construe or affect this Stipulation.

14 The accompanying Order becomes effective immediately upon the approval of this Stipulation and signing of the Order by the Division Director. Respondent shall comply with all the terms and conditions of this Stipulation immediately following the Division Director's signing of the Order page of this Stipulation and Order. Respondent shall comply with and timely complete all the terms and conditions of probation. If a time period for completion of a term or condition is not specifically set forth in the Stipulation and Order, Respondent agrees that the time period for completion of that term or condition shall be set by the Division and Board. Failure to comply with and timely complete a term or condition shall constitute a violation of the

Stipulation and Order and may subject Respondent to revocation or other sanctions.

15 Respondent understands that the disciplinary action taken by the Division in this Stipulation and Order may adversely affect any license that Respondent may possess in another state or any application for licensure Respondent may submit in another state

16 If Respondent violates any term or condition of this Stipulation and Order, the Division may take action against Respondent, including imposing appropriate sanction, in the manner provided by law. Such sanction may include revocation or suspension of Respondent's license, or other appropriate sanction.

17 Respondent has read each and every paragraph contained in this Stipulation and Order. Respondent understands each and every paragraph contained in this Stipulation and Order. Respondent has no questions about any paragraph or provision contained in this Stipulation and Order.

DIVISION OF OCCUPATIONAL &
PROFESSIONAL LICENSING

RESPONDENT

BY: 

NOEL TAXIN
Bureau Manager

BY: 

DAVID MAX ANDERSON
Respondent

DATE: 10/31/11

DATE: 10/27/11

MARK L. SHURTLEFF
ATTORNEY GENERAL

BY: 

L. MITCHELL JONES
Counsel for the Division

DATE: 31 Oct 2011

ORDER

THE ABOVE STIPULATION, in the matter of **DAVID MAX ANDERSON**, is hereby approved by the Division of Occupational and Professional Licensing, and constitutes my Findings of Fact and Conclusions of Law in this matter. The issuance of this Order is disciplinary action pursuant to Utah Administrative Code R156-1-102(6) and Utah Code Ann. § 58-1-401(2). The terms and conditions of the Stipulation are incorporated herein and constitute my final Order in this case.

DATED this 31 day of October, 2011

DIVISION OF OCCUPATIONAL AND
PROFESSIONAL LICENSING


MARK STEINAGE
Director

Investigator: Lynn Hooper